

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

ANTHONY J. GURINO  
HI-TECH MECHANICAL, INC.  
ATRATECH, INC.  
B.A.P. CONSTRUCTION  
MANAGEMENT SERVICES, LTD.  
ENDRES PLUMBING CORPORATION  
LOU-ROE PROPERTIES, INC.  
a.k.a. LOU-ROE FARMS AND  
LOU-ROE TRAINING CENTER,

Respondents.

HUDALJ 93-2071-DB

Atlee W. Wampler, III, Esquire  
For the Respondent

Walter Warren, Esquire  
For the Department

Before: WILLIAM C. CREGAR  
Administrative Law Judge

**INITIAL DETERMINATION AND ORDER**

This proceeding arose pursuant to 24 C.F.R. §§ 24.100, *et seq.* On July 22, 1993, Michael B. Janis, General Deputy Assistant Secretary for Housing, U.S. Department of Housing and Urban Development ("HUD" or "the Department") temporarily suspended and proposed an indefinite debarment of Anthony J. Gurino and his alleged affiliates, Hi-Tech Mechanical, Inc.; Atratech, Inc.; B.A.P. Construction Management Services, Ltd.; Endres Plumbing Corporation; and, Lou-Roe Properties, Inc., also known as Lou-Roe Farms and Lou-Roe Training Center ("Respondents") from further participation in primary and lower tier covered transactions as either participants or principals at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts with HUD. The Department's action is based upon Mr. Gurino's conspiracy and money laundering conviction in the United States District Court for the Northern District of Florida, Gainesville Division, for

violations of 18 U.S.C. §§ 371 and 1956 (a) (1) (B) (1).

On August 24, 1993, Respondents filed an Answer and requested a hearing. The Department's regulations provide that where, as here, the action is based upon a conviction, the hearing shall be limited to submission of documentary evidence and written briefs. 24 C.F.R. § 24.313 (b) (2) (ii). Accordingly, on October 8, 1993, I issued an Order requiring that the government file a brief by October 28, 1993, and that Respondents file their brief by November 29, 1993. The Department filed its Brief in Support of Suspension and Debarment on October 29, 1993; and Respondents filed their Brief in Opposition to the Suspension and Debarment on November 29, 1993.<sup>1</sup>

On December 10, 1993, the Department submitted a Reply Brief. In response, Respondents filed a Motion to Strike, or in the Alternative Surreply to Government's Reply and the Department filed a Response to the Surreply. Because Respondents have had an opportunity to respond to the Department's filings, they have not been prejudiced. Accordingly, I deny Respondents' Motion and have considered the Department's Reply Brief, Respondents' Surreply and the Department's Response to the Surreply. The record is now closed and this matter is ripe for decision.

### **Statement of Facts**

1. In 1969, Respondent Gurino founded ARC Plumbing and Heating ("ARC") in New York City. In May 1986, the City of New York debarred ARC from obtaining City contracts for three years, until May 29, 1989. Mr. Gurino was subsequently convicted of obstruction of justice, following a trial in the United States District Court for the Eastern

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<sup>1</sup>Noting the October 29, 1993, postmark on the Department's Brief, Respondents contend that the brief was filed one day late. Section 26.14 (a) of 24 C.F.R. states that a document is considered timely filed if postmarked on or before the due date or personally delivered by the close of business on the due date, to the appropriate person, *i.e.*, the hearing officer or Chief Docket Clerk, Office of Administrative Law Judges. The Department failed to satisfy either requirement. Although the Department's Brief was not timely filed, there nevertheless has been no demonstration of prejudice to Respondents. Accordingly, I have considered this document.

District of New York. Govt. Ex. 5, pp. 1-2.<sup>2</sup>

2. In June 1986, two ARC employees, Messrs. Aufiero and Borello, founded Hi Tech Mechanical ("Hi Tech") and became its principal officers. Hi Tech took over ARC's New York City plumbing contracts. In 1987, New York City determined that Hi Tech was ARC's "alter ego" and debarred it from obtaining New York City contracts for three years, running concurrently with ARC's debarment. *Id.* at 2.

3. In February 1988, the HUD New York Regional Office imposed a Limited Denial of Participation ("LDP") upon ARC based upon its felony conviction for offering a false instrument for filing. The false document was an application to New York City for registration as a responsible and eligible bidder. The LDP prohibited ARC's participation in HUD programs. On February 2, 1990, the HUD Board of Contract Appeals ("HUBCA") debarred ARC from participation in HUD programs for three years, until February 28, 1991. In determining the debarment period, the HUBCA credited the time that ARC was subject to the LDP. Govt. Ex. 6.

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<sup>2</sup>"Govt. Ex." refers to the Government Exhibits attached to the Government's Brief in Support of Suspension and Debarment (Oct. 29, 1993).

4. In 1989 Hi Tech became affiliated with two other entities, Endres Plumbing ("Endres") and Atratech. Hi Tech merged with Endres, and also became a wholly owned subsidiary of Atratech. Messrs. Borello, Aufiero, and one Vincent Sorena,<sup>3</sup> a personal friend of Mr. Gurino's, became the President, Secretary, and Chief Executive Officer, respectively, of Atratech. The Hi Tech-Endres-Atratech entity hired Mr. Gurino as the "Chief Consultant," who along with the other three officers controlled the day-to-day operations of the company. Mr. Gurino's duties and authorities included supervision over most employees, review of expenditures, approval of invoices, involvement in coordination and estimates of jobs, and determination of the structure of the company. Govt. Ex. 5, pp. 3-4.

5. From 1989 until February 1992, the Hi Tech-Endres-Atratech entity submitted bids on several New York City Housing Authority ("NYCHA") plumbing contracts. Most of these contracts were funded through HUD's Comprehensive Improvement Assistance Program ("CIAP"). *Id.*

6. In order to qualify for the CIAP contracts, NYCHA required the submission of Business Entity Questionnaires ("BEQs") which requested information on company principals and consultants. In addition, HUD required the submission of Previous Participation Certificates ("PPCs") which sought similar information. The PPC instructions defined a company "principal" to include consultants expected to participate in the contracts. *Id.* at 4.

7. From 1989 through 1991, the Hi Tech-Endres-Atratech entity submitted the questionnaires and PPCs without disclosing Respondent Gurino's involvement with the company. Between 1989 and 1992, the company was awarded 28 CIAP contracts worth approximately \$18 million. Respondent Gurino acknowledges that had his involvement been disclosed, the company would not have been awarded the contracts. *Id.* at 4-5.

8. From 1989 through 1991, Respondent Gurino received payments from Hi Tech-Endres-Atratech for his participation in the company. A portion of that income was derived from the CIAP contracts and was paid to B.A.P. Construction Management

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<sup>3</sup>Messrs. Aufiero, Borello, and Sorena each pleaded guilty to one count of mail fraud in violation of 18 U.S.C. § 1341. Govt. Ex. 5, p. 3 n.1.

Services, Ltd. ("BAP") on his behalf. *Id.* at 6. Respondent Gurino along with his wife, Barbara Ann Pace Gurino, incorporated BAP which was owned and operated by Ms. Gurino. Govt. Ex. 3, pp. 2, 6 and 7.

9. Respondent Gurino purchased Lou-Roe Farms, located in Levy County, Florida, in the name of Lou-Roe Properties, Inc. Lou-Roe Farms did business as Lou-Roe Training Center, a 113 acre horse farm in Morriston, Florida. Respondent Gurino transferred title to the farm to his wife and his son, Louis. *Id.* at 1-3.

10. After BAP received payments from Hi Tech-Endres-Atratech, BAP transferred the funds to Lou-Roe Farms. *Id.* at 6-11. Specifically, Respondent Gurino transferred \$25,000 by check from BAP to Lou-Roe Farms. These funds were proceeds from the CIAP contracts and the transfer of the funds concealed the nature, location, source and ownership of the funds. Govt. Ex. 5, pp. 7-8.

11. On February 12, 1992, Respondent Gurino and others were indicted for conspiracy, money laundering, and mail fraud, in violation of 18 U.S.C. §§ 371, 1341, and 1956 (a) (1) (B) (i). Govt. Ex. 3.

12. On June 23, 1993, Respondent Gurino pleaded guilty and was convicted of conspiracy and money laundering in violation of 18 U.S.C. §§ 371 and 1956 (a) (1) (B) (1). He was convicted of knowingly and willingly conspiring to disguise the nature, source, control, and ownership of funds, some of which were fraudulently obtained from the CIAP contracts and channeled through BAP to Lou-Roe Farms. Govt. Ex. 2; Govt. Ex. 3, pp. 4-11.

13. In support of the guilty plea, Respondent Gurino executed an extensive statement in which he admitted facts sufficient to support the conviction. Govt. Ex. 5. He was sentenced to concurrent terms of 60 and 97 months imprisonment, fined \$19,012.40, and ordered to pay a special assessment of \$200. Govt. Ex. 2.

### **Discussion and Subsidiary Findings**

The purpose of debarment is to protect the public interest by precluding persons who are not "responsible" from conducting business with the federal government. 24 C.F.R. § 24.115(a). *See also Agan v. Pierce*, 576 F. Supp. 257, 261 (N.D. Ga. 1983); *Stanko Packing Co., Inc. v. Bergland*, 489 F. Supp. 947, 948-49 (D.D.C. 1980). The debarment process is not intended to punish; rather, it is designed to protect governmental interests not safeguarded by other laws. *Joseph Constr. Co. v. Veterans Admin.*, 595 F. Supp. 448, 452 (N.D. Ill. 1984); *see also* 24 C.F.R. § 24.115.

"Responsibility" as defined includes integrity, honesty, and the general ability to conduct business lawfully. *See* 24 C.F.R. § 24.305; *see also Gonzalez v. Freeman*, 334 F.2d 570, 573 & n.4, 576-77 (D.C. Cir. 1964). Determining "responsibility" requires an assessment of the current risk that the government will be injured in the future by

doing business with a respondent. See *Shane Meat Co., Inc. v. U.S. Dep't of Defense*, 800 F.2d 334, 338 (3rd Cir. 1986). That assessment may be based on past acts. See *Agan*, 576 F. Supp. at 257; *Delta Rocky Mountain Petroleum Inc. v. Dep't of Defense*, 726 F. Supp. 278 (D. Colo. 1989).

HUD has the burden of establishing that the Respondent is a "participant" or "principal" and that cause for debarment exists. A respondent has the burden of establishing any mitigating circumstances. 24 C.F.R. § 24.313 (b) (3) and (4). The mere existence of a cause for debarment does not necessarily mandate that an individual be debarred. The sanction is a discretionary one that requires consideration of the seriousness of a respondent's acts or omissions, as well as any evidence of mitigation. 24 C.F.R. §§ 24.115 (d) and 24.300; see also *Agan*, 576 F. Supp. at 260-61.

### 1. Respondent Gurino and His Affiliates Are Subject to Debarment.

Respondents Hi Tech, Endres, Atratech, and Gurino are "participants," and Mr. Gurino is a "principal" in "covered transactions." As participants and principals in covered transactions; they are subject to the Department's debarment regulations. 24 C.F.R. § 24.110(a).

A "participant" is defined as any entity or person "who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction" and includes "any person who acts on behalf of or is authorized to commit a participant in a covered transaction. . . ." 24 C.F.R. § 24.105 (m).<sup>4</sup> A "principal" is any "person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant." 24 C.F.R. § 24.105 (p). When the Hi Tech-Endres-Atratech entity applied for and entered into the CIAP contracts, the company became a

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<sup>4</sup>A "proposal" is a "bid, application, request. . . or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction," 24 C.F.R. § 24.105 (q); and a covered transaction includes any nonprocurement transaction between an agency and a person, 24 C.F.R. § 24.110.

participant. Respondent Gurino was a participant and principal by virtue of his position as Chief Consultant because he was authorized to act on the company's behalf. See 24 C.F.R. § 24.105(m) and (p). His authority included control over the daily operations of the company, supervision of employees, and review of expenditures.

Not only is the Hi Tech-Endres-Atratech entity a participant, it and the other named entities are affiliates of Mr. Gurino as well. Because the debarment of a principal or participant extends to and includes all affiliates, these entities are also subject to the debarment regulations. 24 C.F.R. § 24.325 (a) (2). "Persons [or entities] are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other . . . . Indicia of control include, but are not limited to: interlocking management or ownership [and] identity of interests among family members." 24 C.F.R. § 24.105 (b). Respondents acknowledge that Hi Tech, Endres, Atratech, BAP, Lou-Roe Farms, Lou-Roe Properties, Inc., and Lou-Roe Training Center are affiliates of Mr. Gurino. See Respondents' Answer (Aug. 24, 1993). In addition, the record reflects that Respondent Gurino incorporated, created, and/or purchased BAP, Lou-Roe Farms, Lou-Roe Properties, Inc., and Lou-Roe Training Center, and that they were staffed by his family members and used for his benefit. Accordingly, I conclude that BAP, Lou-Roe Farms, Lou-Roe Properties, Inc., Lou-Roe Training Center, Hi Tech, Endres, and Atratech are affiliates of Mr. Gurino, and therefore, are subject to debarment. See 24 C.F.R. § 24.325 (a) (2).

## 2. Respondent's Conviction Provides Cause for Debarment.

Cause for debarment exists where a respondent has been convicted of "fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction . . . ." 24 C.F.R. § 24.305 (a) (1). Respondent Gurino was convicted of conspiracy and money laundering for his part in the scheme that concealed the ownership and control of funds, some of which were obtained from the CIAP contracts. The CIAP contracts are public agreements, see 24 C.F.R. § 24.305 (e), and the payments he received for performing these contracts were used by him in money laundering. Accordingly, he was convicted of a criminal offense in connection with performing public agreements, and the Department has established cause for debarment under 24 C.F.R. § 24.305 (a) (1).

Respondents contend that cause does not exist because the conviction is improper and is presently on appeal to the United States Court of Appeals for the Eleventh Circuit. I disagree. Respondent Gurino pleaded guilty to two counts of the indictment. In support of his plea, he executed an extensive statement in which he admitted facts sufficient to support that conviction. HUD's regulations provide for the imposition of debarment based upon a conviction and do not contemplate delaying the process pending the outcome of an appeal. To do so would put the government at unnecessary risk by permitting a person demonstrated by conviction to be irresponsible

to continue to deal with the government.<sup>5</sup> Rather, the regulations provide another avenue should Respondent's conviction be overturned. Specifically, after reversal of a conviction, a respondent may request that the debarring official reverse a debarment. An overturned

conviction is one of the bases for termination of a debarment. See 24 C.F.R. § 24.320 (c).<sup>6</sup>

### 3. An Indefinite Debarment Is Warranted.

Although the period of debarment normally should not exceed three years, "[w]here circumstances warrant, a longer period of debarment may be imposed." 24 C.F.R. § 24.320 (a) (1). Upon examination of these criteria, I find that an indefinite debarment is warranted.

The seriousness of Respondent Gurino's actions demonstrates the extent of his present irresponsibility and accordingly, warrants a lengthy debarment. He was involved in an intricate scheme of conspiracy and money laundering. He knowingly and

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<sup>5</sup>Respondents' corresponding attack on the underlying indictment is similarly defective, and I find that the Department's suspension was justified. See 24 C.F.R. § 24.405.

<sup>6</sup>Respondents also attack the underlying basis of one of the prior debarments. They state that a NYCHA debarment resulted from Mr. Gurino's exercise of his Fifth Amendment right not to incriminate himself and that a debarment should not be based on the exercise of one's rights. See Respondents' Answer, p. 6. However, this is not the forum to attack that debarment. What is of significance here is that despite this previous sanction (no matter the grounds), Respondents continued to engage in misdeeds.



willingly conspired to conceal the nature, location, source, ownership, and control of funds, some of which were fraudulently obtained from the CIAP contracts. He repeatedly failed to reveal his position at Hi Tech-Endres-Atratech to both HUD and NYCHA despite requirements to the contrary. Had he revealed his position at the company, the CIAP contracts would not have been awarded to the Hi Tech-Endres-Atratech entity. These actions demonstrate that Respondent poses a present risk to the government that it could be injured in any future dealings with him.

Moreover, despite previous debarments and prior convictions, Respondents continued to engage in criminal wrongdoing. The prior limited-term sanctions did not serve the remedial purpose contemplated by the debarment process. If Respondents are not debarred indefinitely, the risk to the government that it will be subject to additional irresponsible conduct is too great to allow Respondents the opportunity to do business with the government in the future.

To counter the seriousness of Respondent Gurino's wrongdoing, Respondents assert as a mitigating factor that the Hi Tech-Endres-Atratech entity has never failed to perform under any government contract. See Respondents' Answer, pp. 5-6. Adequate performance by a contractor does not immunize the government from the risk of dealing with that contractor if it is controlled by an individual who has repeatedly engaged in acts of concealment and fraud.

### **Conclusion and Determination**

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Respondents Anthony J. Gurino, Hi-Tech Mechanical, Inc., Atratech, Inc., B.A.P. Construction Management Services, Ltd., Endres Plumbing Corporation, Lou-Roe Properties, Inc., Lou-Roe Farms, and Lou-Roe Training Center from participating in covered transactions as either participants or principals at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts with HUD, for an indefinite period of time.

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WILLIAM C. CREGAR  
Administrative Law Judge

Dated: April 7, 1994.

## **CERTIFICATION OF SERVICE**

I hereby certify that copies of this INITIAL DETERMINATION AND ORDER issued by WILLIAM C. CREGAR, Administrative Law Judge, HUDALJ 93-2071-DB, were sent to the following parties on this 7th day of April, 1994, in the manner indicated:

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